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**FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463**

FIRST GENERAL COUNSEL'S REPORT

PRE-MUR: 458

DATE ACTIVATED: 1/10/08

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SOURCE:

RESPONDENTS: Galen Capital Group and William P. Danielczyk

OFFICER, EMPLOYEE AND GALEN-AFFILIATED CONDUIT RESPONDENTS:

Zahir Ahmad

Mark Beesley

Eugene Biagi

Stephen D. Moses

Bruce Riddle

Gino P. Isaac

April Spittle

Eric Wagner

Philip Layton

**RELEVANT STATUTES: 2 U.S.C. § 441b(a)
2 U.S.C. § 441f
11 C.F.R. § 114.2**

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I. INTRODUCTION

Galen Capital Group ("Galen"), a privately held merchant banking firm in McLean, Virginia, and William Danielczyk, Galen's chairman and CEO,

The next day, the Wall Street Journal published an article that indicated that Galen may have reimbursed employees for contributing to Hillary Clinton's campaign.²

As set forth more fully below, the available information indicates that Galen and Danielczyk knowingly and willfully reimbursed employees for campaign contributions in violation of 2 U.S.C. §§ 441b(a) and 441f. Further, there is information suggesting that Galen and Danielczyk violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2 by using corporate resources to facilitate the making of contributions. Accordingly, we recommend that the Commission find reason to believe that Galen and Danielczyk knowingly and willfully violated 2 U.S.C. §§ 441b(a) and 441f and violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2. In addition, we recommend that the Commission find reason to believe that certain Galen officers knowingly and willfully violated 2 U.S.C. §§ 441b(a) and 441f by consenting to the reimbursement scheme and serving as conduits for the corporate contributions. We also recommend that the Commission

² See Mullins, Brody and Dugan, Ianthe Jeanne, "Donors Stir 'Bundling' Questions," The Wall Street Journal, September 20, 2007, p. A3.

1 find reason to believe that other Galen employees and Galen affiliates knowingly and willfully
2 violated 2 U.S.C. § 441f by permitting their names to be used to effect contributions in the name
3 of another. Finally, we recommend that the Commission take no action at this time as to family
4 member conduits.

5 The Department of Justice ("DOJ") is proceeding with criminal charges against
6 Danielczyk.³

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12 **II. FACTUAL AND LEGAL ANALYSIS**

13 **A. Factual Background**

14 Galen's Chairman and CEO, William Danielczyk, co-hosted a fundraiser for Clinton's
15 Senate campaign in September 2006 ("Senate Fundraiser") and another fundraiser for Clinton's
16 Presidential campaign in March 2007 ("Presidential Fundraiser").⁴ Galen's internal investigation
17 revealed that the corporation through Danielczyk reimbursed employees, officers, and third
18 parties including family members of Galen employees for contributions they made in connection
19 with these fundraisers.

³ See Wilke, John R. and Mullins, Brody, "U.S. Criminal Probe Eyes Clinton Donor," The Wall Street Journal, May 10, 2008, p. A3.

⁴ According to The Wall Street Journal, Danielczyk is identified on Hillary Clinton's campaign website as a "HillRaiser," i.e., someone who bundles at least \$100,000 in contributions for her. See *id.*

1. 2006 Senate Fundraising Event

The Senate Fundraiser was held on September 12, 2006, at the Ritz-Carlton in Tyson's Corner, Virginia. It was co-hosted by Zahir Ahmad, who is described by Galen as a business associate of Danielczyk's and an investor in Galen. Galen reimbursed 11 people for contributions to the 2006 Senate Fundraiser totaling \$42,400. The reimbursed individuals included six Galen officers and employees. Because the reimbursement amounts did not exactly match the contribution amounts, the corporation actually paid out \$44,129.52 in reimbursements for these contributions. Galen made reimbursements for the Senate Fundraiser by corporate checks coded as "expenses for the months of August and September."

Several Galen employees helped with the Senate Fundraiser. Two employees worked at the front desk at the event to accept contributions and hand out name tags. Another employee took photographs, but this employee explained that he volunteered for this task. One employee helped plan the events by interfacing with the campaign, sending out invitations, and taking RSVPs. This employee considered these activities to be "part of the job" and spent 10-15 hours per week leading up to the event and 20 hours the week of the event working on coordinating the fundraiser.

The corporation paid for several out-of-town employees' travel expenses, but Galen's submission maintains that this travel was related to business meetings that were scheduled around the time of the Senate Fundraiser.

2. 2007 Presidential Fundraiser

As with the 2006 Senate Fundraising event, Zahir Ahmad co-hosted the 2007 Presidential Fundraiser with Danielczyk. This fundraiser was held on March 27, 2007, at Senator Hillary Clinton's house in Washington, D.C. Galen reimbursed 34 individuals for contributions to the

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1 2007 Presidential Fundraiser totaling \$156,300. The reimbursed individuals included eight
2 Galen officers and employees and six of their family members. Again, because the
3 reimbursement amounts did not exactly match the contribution amounts, Galen actually paid out
4 \$154,551.19. Galen made the reimbursements for the Presidential Fundraiser by corporate
5 checks coded as "marketing expenses."

6 At the Presidential Fundraiser, campaign staff required contributors to sign an
7 authorization form, which included a paragraph confirming that the contribution was not being
8 reimbursed by another. According to , contributors interviewed
9 by Galen's law firm indicated that they either did not read or understand the form, or that they
10 thought their contributions were nevertheless permissible.⁵ Galen said it assumes that
11 contributors signed similar forms for the Senate Fundraiser, but it could not locate copies of any.
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13 For the 2007 Presidential Fundraiser, Galen provided a limousine service to transport
14 several employees to and from the event. While Galen initially paid for these limousine services,
15 Galen communications officer April Spittle reimbursed the company for these expenses from her
16 personal funds on September 19, 2007, after it came to her attention that the corporate
17 expenditure was illegal.

⁵ The September 20, 2007, Wall Street Journal article contained a suggestion that Galen may have made one contribution in the name of another without that person's knowledge. See Wilke, *et al.*, *supra* note 2. According to the article, an anonymous investor who attended the Presidential Fundraiser and who was being wooed by Galen at the time claimed he did not donate any money to Clinton's campaign, even though campaign finance records show that he contributed \$4,600 on March 30. *Id.* In its follow-up response, Galen stated that it did not know to whom the article referred.

3. Danielczyk's Explanation of the Reimbursements

Danielczyk claims that while he was aware that corporations could not make direct contributions to campaigns, he was unaware that federal law prohibited a corporation from reimbursing individual contributions. According to , Danielczyk viewed the reimbursements not as reimbursements for contributions, but rather as a "general benefit or perquisite related to employment or association with Galen." . Specifically, he believed that employees would enjoy the "special, unique, and exciting benefit" of attending a private event with Hillary Clinton.

In the case of the Presidential Fundraiser, Danielczyk said he intended to reward officers and employees with bonus payments relating to a March 22, 2007, transaction in which Galen made a significant investment in International Jet Management ("IJM"). According to Danielczyk, the checks provided around the time of the Presidential Fundraiser were intended to be the first installment in a series of bonuses relating to the IJM deal, but were timed to allow recipients to be able to attend the Presidential Fundraiser. According to

, Galen also gave several non-employees checks around the same time because Danielczyk wanted these individuals to enjoy the same opportunity to attend the fundraiser.

The facts suggest, however, that Danielczyk only created this explanation of the 2007 checks after seeing news reports about Norman Hsu in early September 2007, and perhaps after receiving phone calls from the Wall Street Journal. Sometime in September 2007, Danielczyk "caused to be drafted" a letter explaining that the March 2007 reimbursement checks were intended as "consulting fees" relating to the IJM transaction. The letter was backdated March 20, 2007, and distributed to "a number of people" who had received

1 contribution reimbursements. . . . Later in September, Galen distributed \$1,500 checks to
2 "several of the individuals" who had received reimbursements in March 2007, along with a letter
3 explaining that the check was the second installment of the IJM consulting fee. . . . These letters
4 were backdated September 1, 2007. According to Galen's . . . , a third
5 payment relating to the IJM transaction was scheduled for early 2008. .

6 **B. Legal Analysis**

7 Corporations are prohibited from using corporate resources to engage in campaign
8 fundraising activities. See 2 U.S.C. § 441b(a). A corporation can only act through its directors,
9 officers, and agents, and may be held liable for the acts of an employee within the scope of the
10 employment and that benefit the corporate employer. See *United States v. Wallach*, 935 F.2d
11 445, 462 (2d Cir. 1991); 1 William Meade Fletcher et al., *Fletcher Cyclopedic of the Law of*
12 *Private Corporations* § 30 (Supp. 2004). See, e.g., *Liquid Air Corp. v. Rogers*, 834 F.2d 1297,
13 1306 (7th Cir. 1987). In addition, section 441b(a) prohibits any officer or director of any
14 corporation from consenting to any expenditure or contribution by the corporation. This
15 prohibition extends to the facilitation of contributions to candidates or political committees by a
16 corporation and its officers, directors or agents. See 11 C.F.R. § 114.2(f)(1). Facilitation
17 includes situations when officials of a corporation direct subordinates "to plan, organize or carry
18 out the fundraising project as part of their work responsibilities using corporate ... resources."
19 11 C.F.R. § 114.2(f)(2)(i)(A). The Federal Election Campaign Act, as amended (the "Act"), also
20 provides that no person shall make a contribution in the name of another person or knowingly
21 permit their name to be used to effect such a contribution. 2 U.S.C. § 441f.

22 As set forth below, Galen and Danielczyk's actions appear to fall squarely within the
23 prohibitions against making contributions in the name of another and making corporate

1 contributions to federal political committees. It also appears that they used corporate resources
2 to facilitate the making of contributions. In addition, the conduits may have violated the Act by
3 allowing their names to be used to effect such contributions. Finally, Galen officers may have
4 additional liability for consenting to the making of corporate contributions.

5 1. Galen and Danielczyk Reimbursed Contributors with
6 Corporate Funds

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8 In their submission, Galen and Danielczyk admit that they reimbursed
9 contributors by corporate check. They also "accept full
10 responsibility for these actions." Although Danielczyk claims that he did not know it
11 was illegal to reimburse contributions, the submission acknowledges that the donor cards signed
12 by him and other contributors contained this warning, and he fails to explain his efforts to
13 conceal the payments.

14 It appears that Galen and its CEO, William Danielczyk, knowingly and willfully violated
15 2 U.S.C. §§ 441b(a) and 441f by reimbursing campaign contributions with corporate funds. To
16 establish a knowing and willful violation, there must be knowledge that one is violating the law.
17 See *FEC v. John A. Drameci for Congress Comm.*, 640 F. Supp. 985, 987 (D.N.J. 1986). A
18 knowing and willful violation may be established "by proof that the defendant acted deliberately
19 and with knowledge that the representation was false." *U.S. v. Hopkins*, 916 F.2d 207, 214 (5th
20 Cir. 1990). An inference of a knowing and willful act may be drawn "from the defendant's
21 elaborate scheme for disguising" his or her actions. *Id.* at 214-15.

22 Accordingly, the fact that Galen coded the reimbursements as "expenses for the months
23 of August and September" and "marketing expenses," combined with the fact that the
24 reimbursement amounts do not exactly match the contribution amounts, suggests knowledge of

1 the impermissibility of the reimbursements and an attempt to conceal their purpose. It also
2 appears that Danielczyk signed a donor authorization card stating that his own 2007 contribution
3 was not being reimbursed. Backdating two letters to "cover up" the 2007 reimbursements also
4 strongly suggests knowing and willful conduct.⁶ Finally, it simply strains credulity that
5 Danielczyk would know that corporations could not make campaign contributions while
6 believing that a corporation could reimburse employees and others for such contributions.
7 Therefore, we recommend that the Commission find reason to believe that Galen Capital Group
8 and William P. Danielczyk knowingly and willfully violated 2 U.S.C. §§ 441b(a) and 441f.

9 **2. Corporate Resources May Have Been Used to Facilitate the**
10 **Contributions**

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12 Several of Galen's actions may constitute corporate facilitation in violation of 2 U.S.C.
13 § 441b(a) and 11 C.F.R. § 114.2. Specifically, Galen may have facilitated contributions when it
14 provided a limousine service to the 2007 Presidential Fundraiser. Further, Galen may have
15 impermissibly facilitated contributions by requiring employees to plan and work at the 2006
16 Fundraiser and by paying for travel of out-of-town guests. The Commission will need to
17 investigate further to determine whether these actions violated the Act, and, if so, whether Galen
18 and the relevant officers and employees acted knowingly and willfully with respect to those

⁶ Such information has supported a "knowing and willful" finding in the past. The Commission approved a conciliation agreement finding Pierce O'Donnell to have knowingly and willfully violated 2 U.S.C. § 441f in part based on similar conduct, including signing a donor card stating that contributions cannot be reimbursed by another and using a scheme to disguise the source of contributions that included coding reimbursement checks as "bonus[es]." See MUR 5758. In that case, the finding of a knowing and willful violation was further supported by the fact that the respondent had extensive experience with political fundraising, including having served on the national finance committee of a presidential campaign. See also MUR 5871 (Noe) (criminal intent inferred from reimbursements that were slightly higher or lower than contribution amounts); cf. MUR 5357 (Cemina) and MUR 4931 (Aurionox) (reimbursements from corporation were "grossed-up" to offset any tax liability).

1 violations. Therefore, we recommend that the Commission find reason to believe that Galen
2 Capital Group and William P. Danielczyk violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2.

3 **3. Galen Officers and Directors Accepted Reimbursement from the**
4 **Corporation and Consented to Corporate Contributions**

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6 In addition, other Galen officers and directors were reimbursed for their contributions by
7 the corporation. Most, if not all, signed donor authorization cards stating that they were making
8 contributions from their own personal funds and were not being reimbursed. Thus, they appear
9 to have violated the Act by knowingly and willfully permitting their names to be used to make
10 contributions for the corporation. Moreover, because they knew that their own contributions
11 were being reimbursed with corporate funds, they appear to have known about, and consented to,
12 the use of corporate funds to make contributions. Therefore, we recommend that the
13 Commission find reason to believe that Mark Beesley, Eugene Biagi, Gino Isaac, Phil Layton,
14 Stephen Moses, Bruce Riddle, April Spittle, and Eric Wagner knowingly and willfully violated 2
15 U.S.C. §§ 441b(a) and 441f.

16 **4. Galen Employees and Galen-Affiliated Conduits Allowed Their**
17 **Names to Be Used for Another's Contribution**

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19 Many Galen employees and guests, including IJM officials and employees, potential
20 investors, and an outside attorney, wrote contribution checks for the Senate and Presidential
21 fundraisers already having been reimbursed or knowing that they would be reimbursed.
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3 Most, if not all of these conduits, signed donor cards stating
4 that they were making the contributions themselves and were not being reimbursed. See MUR
5 5871 (Noe) (knowing and willful violations supported by signed donor authorization cards).
6 Therefore, we recommend that the Commission find reason to believe that Zahir Ahmad,

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10 **5. Family Member Conduits Also Allowed Their Names to Be Used for**
11 **Another's Contribution**
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13 Many family members of Galen officers and employees and of Galen's invited guests also
14 wrote contribution checks, signed donor cards, and allowed their contributions to be reimbursed
15 by Galen. At this time, however, it does not appear likely that these conduits participated in the
16 scheme in any other way or that they would have helpful information unavailable from other
17 sources. Thus, in order to focus the Commission's resources on the key players, we recommend
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1. **Open a Matter Under Review.**
2. **Find reason to believe that Galen Capital Group and William P. Danielczyk knowingly and willfully violated 2 U.S.C. §§ 441b(a) and 441f.**


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3. Find reason to believe that Galen Capital Group and William P. Danielczyk violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2.
4. Find reason to believe that Mark Beesley, Eugene Biagi, Gino Isaac, Philip Layton, Stephen D. Moses, Bruce Riddle, April Spittle, and Eric Wagner knowingly and willfully violated 2 U.S.C. §§ 441b(a) and 441f.
5. Find reason to believe that Zahir Ahmad,


knowingly and willfully
violated 2 U.S.C. § 441f.
- 6.
7. Approve the attached Factual and Legal Analyses.
8. Authorize the use of compulsory process.
9. Approve the appropriate letters.

6/20/2008
Date


Thomasenia P. Duncan
General Counsel


Ann Marie Terzaken
Associate General Counsel for Enforcement


Julie McConnell
Assistant General Counsel


Elena Paoli
Attorney

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First General Counsel's Report

Previously Assigned: Kristin Bateman, Extern

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